

No. PD-0556-20

IN THE TEXAS COURT OF CRIMINAL APPEALS

FILED
COURT OF CRIMINAL APPEALS
1/20/2021
DEANA WILLIAMSON, CLERK

PHI VAN DO

Respondent (Appellant in the Court of Appeals)

v.

THE STATE OF TEXAS

Petitioner (Appellee in the Court of Appeals)

On Review from No. 14-18-00600-CR
in which the Fourteenth District Court of Appeals
considered Cause Number 2130699
from County Criminal Court at Law No. 10
Harris County, Texas
Hon. Dan Spjut, Judge Presiding

**RESPONDENT'S SECOND MOTION FOR LEAVE TO FILE
RESPONSE TO STATE'S REPLY BRIEF ON DISCRETIONARY REVIEW**

ORAL ARGUMENT ORDERED

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Counsel for Respondent

**To the Honorable Presiding Judge Keller and the Judges of the
Court of Criminal Appeals of Texas:**

This Court granted the State's Petition for Discretionary Review on September 30, 2020. The parties have been directed to participate in oral argument on February 17, 2021.

The State advanced the following three grounds for review and this Court granted discretionary review on the basis of all three grounds:

- (1) The Fourteenth Court erred by applying the constitutional harm standard to unobjected-to charge error;
- (2) Alternatively, the Fourteenth Court erred by concluding that a punishment-phase objection preserved error in the guilt phase; and
- (3) The Fourteenth Court erred by finding reversible harm even though the error concerned an uncontested matter established by objective facts.

On October 8, 2020, the State filed a brief in this Court expounding on these grounds. On November 24, 2020, the Respondent (Mr. Phi Van Do) filed his brief. In his brief, Mr. Do noted that all three grounds for review were premised on the existence of jury-charge error. He then argued that the Fourteenth Court of Appeals had erred in finding jury-charge error. Accordingly, Mr. Do's brief did not focus on the three grounds for review advanced by the State. Instead, he focused on the threshold question of whether there was any jury-charge error in the first place.

On December 15, 2020, the State obtained leave to file a brief responding to Mr. Do's brief. The State filed a reply brief the same day. This was totally appropriate. The State's brief was a direct response to Mr. Do's argument that there was no jury-charge error in the first place. Of course, the State had not briefed this issue in its initial brief.

Mr. Do desires to file a response to the State's brief. Mr. Do envisions that the threshold question of whether there was any jury-charge error in the case will be a subject of oral argument. By permitting a response to the State's brief, the question of whether jury-charge error exists can be better presented to this Court before oral argument.

Mr. Do filed his first “Respondent’s Motion for Leave to File Response to State’s Reply Brief on Discretionary Review” on December 28, 2020. This Court granted that motion on December 29, 2020. This Court gave Mr. Do until January 13, 2021 to file his response.

Unfortunately, undersigned counsel did not see that this Court had granted his motion until today (January 15, 2021). This was totally the fault of undersigned counsel. Until today, undersigned counsel had been under the impression that this Court had not yet ruled on his motion.

Accordingly, Mr. Do asks that he be given one additional week **(until Wednesday, January 20, 2021)** to file his response.

Respectfully submitted,

ALEXANDER BUNIN
Chief Public Defender
Harris County, Texas

/s/ Ted Wood
TED WOOD
Assistant Public Defender
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that on January 15, 2021, I provided this motion to the Harris County District Attorney via the EFILETEXAS.gov e-filing system. Specifically, service was made on Mr. Clint Morgan. This service is required by Texas Rule of Appellate Procedure 9.5.

Additionally, I certify that on January 15, 2021, I provided this motion to the State Prosecuting Attorney via the EFILETEXAS.gov e-filing system. This service is required by Texas Rules of Appellate Procedure 68.11 and 70.3.

/s/ Ted Wood

TED WOOD

Assistant Public Defender
Attorney for Respondent

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Associated Case Party: State of Texas

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Clint Morgan		morgan_clinton@dao.hctx.net	1/15/2021 1:50:24 PM	SENT

Associated Case Party: Phi Do

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Ted Wood		ted.wood@pdo.hctx.net	1/15/2021 1:50:24 PM	SENT

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